



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,085	10/20/2003	Lee S. Weinblatt	5264-44	4859

7590 03/16/2011
COHEN, PONTANI, LIEBERMAN & PAVANE
Suite 1210
551 Fifth Avenue
New York, NY 10176

EXAMINER

DEAN, RAYMOND S

ART UNIT	PAPER NUMBER
----------	--------------

2618

MAIL DATE	DELIVERY MODE
-----------	---------------

03/16/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/690,085	Applicant(s) WEINBLATT ET AL.	
	Examiner RAYMOND S. DEAN	Art Unit 2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Pre Appeal Request filed December 28, 2010 with respect to the rejection(s) of claim(s) under 35 U.S.C. 103 using the Kiefl reference have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Weinblatt, which was previously used as the secondary reference, Hendrickson et al. (US 6,745,011), and Friend et al. (US 6,497,368).

Weinblatt teaches an apparatus for monitoring an audience member tuned to a program within a broadcast signal comprising: a portable audience monitoring unit adapted to be worn by the audience member (Cols. 4 lines 34 – 55, lines 66 – 67, 5 lines 1 – 12) including: means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65), and means for storing the detected code signal (Col. 4 lines 34 – 55); means for outputting the detected code signal stored in said portable audience monitoring unit (Col. 5 lines 13 – 18); and communication means for transmitting the outputted detected code signal to a central processing station (Col. 5 lines 13 – 18), wherein the portable audience monitoring unit is configured to be worn by the audience member during the broadcast program to detect the code signal (Cols. 4 lines 66 – 67, 5 lines 1 – 12, lines 19 – 34). Friend,

Art Unit: 2618

which also teaches the transfer of data from one device to another, teaches communication means that communicates data with CDPD (Cols. 5 lines 38 – 43, 9 lines 60 – 67, 10 lines 1 – 4).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weinblatt (5,630,203) and in further view of Friend et al. (US 6,497,368)

Regarding Claim 1, Weinblatt teaches an apparatus for monitoring an audience member tuned to a program within a broadcast signal comprising: a portable audience monitoring unit adapted to be worn by the audience member (Cols. 4 lines 34 – 55, lines 66 – 67, 5 lines 1 – 12) including: means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65), and means for storing the detected code signal (Col. 4 lines 34 – 55); means for outputting the detected code signal stored in said portable audience monitoring unit (Col. 5 lines 13 – 18); and communication means for transmitting the outputted detected code signal to a central processing station (Col. 5 lines 13 – 18), wherein the portable

Art Unit: 2618

audience monitoring unit is configured to be worn by the audience member during the broadcast program to detect the code signal (Cols. 4 lines 66 – 67, 5 lines 1 – 12, lines 19 – 34).

Weinblatt does not teach wherein said communication means communicates with Cellular Digital Packet Data (CDPD).

Weinblatt teaches the base process of transferring data from one device to another, which the claimed invention can be seen as an improvement in that the transfer is done via wireless means thus eliminating the need to physically carry a device, which contains the data to be transferred, to a location such said data can be transferred from said device.

Friend teaches the known technique communication means that communicates data with CDPD (Cols. 5 lines 38 – 43, 9 lines 60 – 67, 10 lines 1 – 4) that is applicable to the base process of Weinblatt.

Friend's known technique set forth above would have been recognized by one skilled in the art as applicable to the base process of Weinblatt and the results would have been predictable and resulted in eliminating the need to physically carry a device, which contains the data to be transferred, to a location such said data can be transferred from said device, which is an improved process.

Therefore, the claimed subject matter would have been obvious to a person having ordinary skill in the art at the time the invention was made.

Regarding Claim 2, Weinblatt teaches a method for monitoring an audience member tuned to a program within a broadcast signal comprising: providing a portable

Art Unit: 2618

audience monitoring unit adapted to be worn by the audience member (Cols. 4 lines 34 – 55, lines 66 – 67, 5 lines 1 – 12); detecting with said portable audience monitoring unit a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65); storing the detected code signal in said portable audience monitoring unit (Col. 4 lines 34 – 55); outputting the detected code signal stored in said portable audience monitoring unit (Col. 5 lines 13 – 18); and transmitting the outputted detected code signal to a central processing station with communication means (Col. 5 lines 13 – 18), wherein said detecting step is performed while said portable audience monitoring unit is worn by the audience member during the broadcast program (Cols. 4 lines 66 – 67, 5 lines 1 – 12, lines 19 – 34).

Weinblatt does not teach wherein said communication means communicates utilizing Cellular Digital Packet Data (CDPD).

Weinblatt teaches the base process of transferring data from one device to another, which the claimed invention can be seen as an improvement in that the transfer is done via wireless means thus eliminating the need to physically carry a device, which contains the data to be transferred, to a location such said data can be transferred from said device.

Friend teaches the known technique communication means that communicates data with CDPD (Cols. 5 lines 38 – 43, 9 lines 60 – 67, 10 lines 1 – 4) that is applicable to the base process of Weinblatt.

Friend's known technique set forth above would have been recognized by one skilled in the art as applicable to the base process of Weinblatt and the results would have been predictable and resulted in eliminating the need to physically carry a device, which contains the data to be transferred, to a location such said data can be transferred from said device, which is an improved process.

Therefore, the claimed subject matter would have been obvious to a person having ordinary skill in the art at the time the invention was made.

4. Claims 3 – 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weinblatt (5,630,203) and in view of Hendrickson et al. (US 6,745,011).

Regarding Claim 3, Weinblatt teaches an apparatus for monitoring an audience member tuned to a program within a broadcast signal comprising: a portable audience monitoring unit adapted to be worn by the audience member (Cols. 4 lines 34 – 55, lines 66 – 67, 5 lines 1 – 12) including: means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65), and means for storing the detected code signal (Col. 4 lines 34 – 55); means for outputting the detected code signal stored in said portable audience monitoring unit (Col. 5 lines 13 – 18); and communication means for transmitting the outputted detected code signal to a central processing station (Col. 5 lines 13 – 18), wherein the portable audience monitoring unit is configured to be worn by the audience member during the

Art Unit: 2618

broadcast program to detect the code signal (Cols. 4 lines 66 – 67, 5 lines 1 – 12, lines 19 – 34).

Weinblatt does not teach wherein said communication means communicates with a ReFLEX protocol.

Weinblatt teaches the base process of transferring data from one device to another, which the claimed invention can be seen as an improvement in that the transfer is done via wireless means thus eliminating the need to physically carry a device, which contains the data to be transferred, to a location such said data can be transferred from said device.

Hendrickson teaches the known technique communication means that communicates data with the ReFLEX protocol (Cols. 5 lines 49 – 52, lines 55 – 63, mobile devices that communicate via the ReFLEX protocol thus transfer data via said protocol) that is applicable to the base process of Weinblatt.

Hendrickson's known technique set forth above would have been recognized by one skilled in the art as applicable to the base process of Weinblatt and the results would have been predictable and resulted in eliminating the need to physically carry a device, which contains the data to be transferred, to a location such said data can be transferred from said device, which is an improved process.

Therefore, the claimed subject matter would have been obvious to a person having ordinary skill in the art at the time the invention was made.

Regarding Claim 2, Weinblatt teaches a method for monitoring an audience member tuned to a program within a broadcast signal comprising: providing a portable

Art Unit: 2618

audience monitoring unit adapted to be worn by the audience member (Cols. 4 lines 34 – 55, lines 66 – 67, 5 lines 1 – 12); detecting with said portable audience monitoring unit a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65); storing the detected code signal in said portable audience monitoring unit (Col. 4 lines 34 – 55); outputting the detected code signal stored in said portable audience monitoring unit (Col. 5 lines 13 – 18); and transmitting the outputted detected code signal to a central processing station with communication means (Col. 5 lines 13 – 18), wherein said detecting step is performed while said portable audience monitoring unit is worn by the audience member during the broadcast program (Cols. 4 lines 66 – 67, 5 lines 1 – 12, lines 19 – 34).

Weinblatt does not teach wherein said communication means communicates utilizing ReFLEX protocol.

Weinblatt teaches the base process of transferring data from one device to another, which the claimed invention can be seen as an improvement in that the transfer is done via wireless means thus eliminating the need to physically carry a device, which contains the data to be transferred, to a location such said data can be transferred from said device.

Hendrickson teaches the known technique communication means that communicates data with the ReFLEX protocol (Cols. 5 lines 49 – 52, lines 55 – 63,

Art Unit: 2618

mobile devices that communicate via the ReFLEX protocol thus transfer data via said protocol) that is applicable to the base process of Weinblatt.

Hendrickson's known technique set forth above would have been recognized by one skilled in the art as applicable to the base process of Weinblatt and the results would have been predictable and resulted in eliminating the need to physically carry a device, which contains the data to be transferred, to a location such said data can be transferred from said device, which is an improved process.

Therefore, the claimed subject matter would have been obvious to a person having ordinary skill in the art at the time the invention was made.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAYMOND S. DEAN whose telephone number is (571)272-7877. The examiner can normally be reached on Monday-Friday 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward F. Urban can be reached on 571-272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2618

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raymond S Dean/
Examiner, Art Unit 2618
Raymond S. Dean
March 11, 2011